another should be adjudged guilty of a higher crime than the other." 2 Hawkins, Pleas of the Crown (6th ed.) 445. Unlike the case of the accessory, an aider and abettor, who is a principal in the second degree, 4 Bl. Comm. *34, could always be convicted before the principal in the first degree, or even after the latter's acquittal by a different jury, *Domina Regina* v. *Wallis* (1703) 1 Salk. 334; see *State* v. *Whitt* (1893) 113 N. C. 716, 719, 18 S. E. 715; *contra, Jones* v. *State* (1880) 64 Ga. 697, the former's guilt and crime being deemed independent of the guilt or crime of anyone else. Because of this independence, the law early recognized the possibility of convicting the principal of the second degree of a higher crime than the principal of the first degree, *Mickey* v. *Commonwealth* (1873) 72 Ky. 593; 1 East's Pleas of the Crown c. 5 §121, and the instant case is in line with modern decisions. *Parker* v. *Commonwealth* (1918) 180 Ky. 102, 201 S. W. 475; *semble, State* v. *Gray* (1895) 55 Kan. 135, 39 Pac. 1050. At the present time, in many, if not in most jurisdictions, the distinction between accessory before the fact and principal has been wiped out by statute and the hitherto accessory can also be convicted regardless of his principal. *People* v. *Bliven* (1889) 112 N. Y. 79, 19 N. E. 638; *Spies et al.* v. *People* (1887) 122 Ill. 1, 12 N. E. 865; 18 Columbia Law Rev. 471.

CRIMINAL LAW—SOLICITING TO MURDER—UNBORN CHILD.—The defendant solicited a woman to kill the child with which she was then *enceinte,* after its birth. The child was later born alive. *Held,* that the defendant was guilty of soliciting the murder of a person under section 4 of the Offences against the Person Act of 1861 (24 & 25 Vic. c. 100). *Rex* v. *Shepherd* (Court of Crim. App. 1919) 35 T. L. R. 366.

An unborn child is not considered a "person" who can be killed within the description of murder at common law. 1 Russell, Crimes (7th Eng. ed.) 663; *State* v. *Prude* (1899) 76 Miss. 543, 24 So. 871; *State* v. *Winthrop* (1876) 43 Iowa 519; see *Evans* v. *People* (1872) 49 N. Y. 86. However, if the child be born alive and die from injuries inflicted while *en ventre,* it is homicide; 3 Coke, Institutes 50; 1 Hawkins, Pleas of the Crown (6th ed.) 121; 2 Bishop, Criminal Law (8th ed.) §633; *Clarke* v. *State* (1897) 117 Ala. 1; and one who solicits the murder of an unborn child that is subsequently born and killed is accessory to the murder. *Parker's Case* (1560) 2 Dyer *186b; 2 Bishop, *op. cit.* §634. From the brief report of *Parker's Case, supra,* it would seem that the theory on which the defendant was made accessory was that the solicitation naturally looked to a future event and the effect of the defendant's felonious intent continued in the mind of the murderer until the killing was consummated. Under this theory the result in the instant case is easily justified, since the child was born alive. A more difficult question would have arisen if the child had been born dead or prosecution had been begun before birth. It is hard to see how the statute could reasonably be stretched to cover such a case and a practical diffi-

oulty would be met in indicating in the indictment the "person" whose murder was solicited. Nevertheless an indictment was sustained in *Regina* v. *Banks* (1873) 12 Cox C. C. 393, under sec. 4 of the statute in question, even though the letter of solicitation was intercepted and never read by the prospective mother. The child was later born alive, but that would seem to have been immaterial as the court under the sixth count necessarily held the offence complete upon the posting of the letter while the child was still unborn. Since, in the light of undisputed authority, the court could not have decided that the unborn child was a "person", the court must have gone on the theory that the purpose of the statute was to punish the mere incitement to murder, the word "person" being inserted to eliminate animals and things. As soliciting the murder of a person was already an offence at common law, 1 Wharton, Criminal Law (11th ed.) 278 n., such a construction is possible. Nevertheless, although public policy might demand this result, it is rather a question for the legislature than the courts.

DESCENT AND DISTRIBUTION—PRETERMITTED HEIR—DETERMINATION OF TESTATOR'S INTENT.—Under a Maine statute, Rev. Stat. c. 79, §9, a child unprovided for in its parent's will is accorded the same interest that it would have taken in the event of intestacy, unless it appears that the testamentary omission was intentional, or was not occasioned by mistake, or that the child had received during the testator's lifetime a due proportion of the estate. *Held,* that under the statute evidence extrinsic to the will is admissible to show that such omission was intentional. *Appeal of Ingraham* (Me. 1919) 105 Atl. 812.

The courts of the several states have adopted widely differing constructions of legislation similar to that in the instant case, the divergence being predicated doubtless more on conceptions of policy than on considerations of statutory construction. Thus, under the Rhode Island law, which makes no specific exception of cases where omission is intentional, even an express disinheritance of the child in the will itself will not suffice to defeat its claim to share in the estate; see *Chace* v. *Chace* (1860) 6 R. I. 407; whereas, in Illinois, where the statute provides that the child shall take unless it appears "by such will" that it was the intention of the testator to disinherit it, it has been held that extrinsic evidence is likewise admissible to prove the intention. *Peet* v. *Peet* (1907) 229 Ill. 341, 82 N. E. 376. Medially ranged are the rules of Missouri, California, and Maine and Iowa: the first judicially qualifying a statute similar to that involved in *Chace* v. *Chace, supra,* by excepting cases where the testator specifically excludes the child in his will; see *Wetherall* v. *Harris* (1872) 51 Mo. 65; the second, holding that the evidence of intentional omission must appear in the will itself, to cut off pretermitted heirs; *In re Wardell's Estate* (1881) 57 Cal. 484; and the two states last named championing the rule exemplified in the instant case. *Cf. Perkins* v. *Perkins* (1899) 109 Iowa 216, 80 N. W. 335; *Whittemore*